STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
TODD R. REID,	)	
	)	**Charge No. 2003CF1117**
Complainant,	)	**EEOC No. 21BA30190**
	)	**ALS No. 05-004**
and	)	
	)	
ABBOTT LABORATORIES,	)	
	)	
Respondent.	)	

ORDER

This matter coming before the Commission pursuant to a Recommended Order and Decision, the Complainant's Exceptions filed thereto, and the Respondent's Response to the Complainant's Exceptions.

The Illinois Department of Human Rights is an additional statutory party that has conducted state action in this matter. They are named herein as an additional party of record. The Illinois Department of Human Rights did not participate in the Commission's consideration of this matter.

IT IS HEREBY ORDERED:

1. Pursuant to 775 ILCS 5/8A-103(E)(1) & (3), the Commission has **DECLINED** further review in the above-captioned matter. The parties are hereby notified that the Administrative Law Judge's Recommended Order and Decision, entered on **November 16, 2009**, has become the Order of the Commission.

STATE OF ILLINOIS)
) **Entered this 12th day of May 2010**
HUMAN RIGHTS COMMISSION)

Commissioner Munir Muhammad

Commissioner Diane Viverito

Commissioner Nabi Fakroddin

STATE OF ILLINOIS
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ABBOTT LABORATORIES,	)	
	)	**Judge William J. Borah**
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

On January 10, 2005, the Illinois Department of Human Rights (IDHR) filed a complaint on behalf of Complainant, Todd R. Reid. That complaint alleged that Respondent, Abbott Laboratories, discriminated against Complainant on the basis of his race when it discharged him.

This matter now comes on to be heard on Respondent's Motion for Summary Decision. Complainant filed a written response to the motion, and Respondent filed a written reply to that response. The matter is ready for decision.

The IDHR is an additional statutory agency that has issued state actions in this matter. The Department is therefore named herein as an additional party of record.

FINDINGS OF FACT

The following facts were derived from uncontested sections of the pleadings or from uncontested sections of the affidavits, referenced portions of the depositions and other documentation submitted by the parties. The findings did not require, and were not the result of, credibility determinations. All evidence was viewed in the light most favorable to Complainant.

1. Complainant Todd R. Reid's race is African- American, and he worked for Respondent, Abbott Laboratories, since March 18, 1994.
2. During the incident cited as the basis for Complainant's discharge, he was employed as a Production Equipment Operator ("PEO") with Respondent.
3. Complainant was discharged on September 5, 2002.
4. It was alleged in the Complaint and admitted in Respondent's Verified Answer that Complainant was discharged because on his shift on March 28/29, 2002, he inaccurately ("falsely") verified that the weights of the vials which Complainant measured were within Respondent's specifications. (September 5, 2002, discharge letter of Mr. Murphy uses the term, "falsification.")
5. In 2002, Abbott sold kits for the detection of Hepatitis C.
6. Enclosed in the kits were a pre-measured amount of concentrate.
7. An incorrect quantity of the contents could result in a patient's blood plasma testing falsely.
8. On August 23, 2002, Respondent received a complaint from a customer that vials of the concentrate in one of the kits appeared to be overfilled.
9. The standard range for the amount of concentrate was between 1.30 ml. and 1.50 ml.
10. The actual amounts reported were each 2.60 ml.
11. As a result of the confirmation of the customer's discovery, Respondent informed the Federal Drug Administration, conducted a nationwide recall of its Hepatitis C kits, informed its customers, quarantined all of the vials still in its possession, and began an investigation as to the cause.
12. It was learned through the Respondent's investigation of the cause that the overfilled vials were poured on March 28, 2002, and ended on March 29, 2002. The cause was human error.

13. The PEO's were obligated as part of their duties to perform a fill check on at least every 500th vial to confirm that the contents were within the weight specifications.

14. The checks of the PEO's were recorded in the Device History Record ("DHR")

15. Although the manufacturing process includes an identification method connecting the vials with its box containers, there is not an exact correlation between the box numbers and vial numbers.

16. The investigators compiled data by using the re-weighted vials along with the information from the fill check tape, "DHR."

17. Complainant worked the first shift on March 29, 2002, from 6:00 a.m. until 2:00 p.m. He was responsible for vials numbered approximately 3,200 through 6,500, making up the contents of five boxes, and recorded all of his vial checks as being within specifications. All of the vials were overfilled on his shift.

18. Only one box of overfilled vials could possibly be attributed to a different shift, however, the investigation could not make that determination with any conclusive certainty.

19. The factual basis for Respondent's discharge is that the inventoried vials which were produced during Complainant's shift were overfilled, yet all of the DHR information submitted by him indicated that the checks were in specification.

20. The adjustments which resulted in the increase and subsequent decrease of the volume of concentrate in the vials were a separate subject of Respondent's investigation. There was no recording to reflect the change in the DHR. No person was identified who made the fill volume adjustments. As a result no other employee was disciplined.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (hereinafter "the Act").

2. Respondent is an "employer" as defined by section 2-101(B)(1)(a) of the Act and is subject to the provisions of the Act.

3. Complainant cannot establish a *prima facie* case of discrimination against him on the basis of his race.

4. Respondent can articulate a legitimate, non-discrimination reason for its actions.

5. There is no genuine issue of material fact on the issue of pretext, and Respondent is entitled to a recommended order in its favor as a matter of law.

6. A summary decision in Respondent's favor is appropriate in this case.

DISCUSSION

SUMMARY DECISION STANDARD

Under section 8-106.1 of the Act, either party to a complaint may move for summary decision. 775 ILCS 5/8-106.1. A summary decision is analogous to a summary judgment in the Circuit Courts. Cano v. Village of Dolton, 250 Ill. App. 3d 130, 138, 620 N.E.2d 1200, 1206 (1st Dist. 1993).

A motion for summary decision should be granted when there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. Fitzpatrick v. Human Rights Comm'n, 267 Ill. App. 3d 386, 391, 642 N.E.2d 486, 490 (4th Dist. 1994). All pleadings, affidavits, interrogatories, and admissions must be strictly construed against the movant and liberally construed in favor of the non-moving party. Kolakowski v. Voris, 76 Ill. App. 3d 453, 456-57, 395 N.E.2d 6, 9 (1st Dist. 1979). Although not required to prove his case as if at a hearing, the non-moving party must provide *some* factual basis for denying the motion. Birck v. City of Quincy, 241 Ill. App. 3d 119, 121, 608 N.E.2d 920, 922 (4th Dist. 1993). Only facts supported by evidence, and not mere conclusions of law, should be

considered. Chevrie v. Gruesen, 208 Ill. App. 3d 881, 883-84, 567 N.E.2d 629, 630-31 (2d Dist. 1991). If a respondent supplies sworn facts that, if uncontroverted, warrant judgment in its favor as a matter of law, a complainant may not rest on his pleadings to create a genuine issue of material fact. Fitzpatrick, 267 Ill. App. 3d at 392, 642 N.E.2d at 490. Where the movant's affidavits stand uncontroverted, the facts contained therein must be accepted as true and, therefore, a complainant's failure to file counter-affidavits in response is frequently fatal to his case. Rotzoll v. Overhead Door Corp., 289 Ill. App. 3d 410, 418, 681 N.E.2d 156, 161 (4th Dist. 1997). Inasmuch as summary decision is a drastic means for resolving litigation, the movant's right to a summary decision must be clear and free from doubt. Purtill v. Hess, 111 Ill.2d 229, 240 (1986).

STANDARD FOR PROVING RACIAL DISCRIMINATION UNDER THE ACT

Complainant alleges that Respondent discharged him from his employment due to his race. There are two methods for proving employment discrimination, direct and indirect. Sola v. Human Rights Comm'n, 316 Ill. App. 3d 528, 536, 736 N.E.2d 1150, 1157 (1st Dist. 2000). Because there is no direct evidence of employment discrimination in this case (*e.g.*, a statement by Respondent that Complainant was being disciplined because of his race), the indirect analysis is appropriate here.

The analysis for proving a charge of employment discrimination through indirect means was described in the U.S. Supreme Court case of McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and is well established. First, Complainant must make a *prima facie* showing of discrimination by Respondent. Texas Dep't. of Cmty. Affairs v. Burdine, 450 U.S. 248, 254-55 (1981). If he does, then Respondent must articulate a legitimate, nondiscriminatory reason for its actions. Id. If Respondent does so, then Complainant must prove by a preponderance of evidence that Respondent's articulated reason is merely a pretext for unlawful discrimination. Id. This analysis has been adopted by the Commission and approved by the Illinois Supreme Court. See Zaderaka v. Human Rights Comm'n, 131 Ill.2d 172, 178-79 (1989).

To establish a *prima facie* case of racial discrimination, Complainant must prove: 1) he is in a protected class; 2) he was meeting Respondent's legitimate performance expectations; 3) Respondent took an adverse action against him; and 4) similarly situated employees outside Complainant's protected class were treated more favorably. Interstate Material Corp. v. Human Rights Comm'n, 274 Ill. App. 3d 1014, 1022, 654 N.E.2d 713, 718 (1st Dist. 1995).

Where, however, the legitimate, non-discriminatory reason for the employment action has been made clear, it is no longer necessary to determine whether a *prima facie* case has been made. Since the only purpose of this type of *prima facie* case is to determine whether the Respondent has to articulate a legitimate reason for it action, it becomes perfunctory to analyze the matter in terms of a *prima facie* case if the legitimate, non-discriminatory reason for the action has already been articulated. *Bush and The Wackenhut Corporation,* 33 Ill. HRC Rep. 161,165,(1987) quoting, U.S. Postal Service v. Aikens, 460 U.S. 711, 103 S. Ct. 1478 (1983). *

(* Federal cases which decide analogous questions under Federal law are helpful but not binding on the Commission in making decisions under the Human Rights Act. City of Cairo v. FEPC, 21 Ill.App.3d 358 (5th Dist.1974).)

By definition, proof of a *prima facie* case raises an inference that there was discrimination. By articulating a reason for the employment action in issue, the Respondent destroys the inference. At that point, the question becomes whether the reason which was articulated by the Respondent was true, or merely a pretext for discrimination. Id.

Abbott terminated Reid because he inaccurately ('falsely") verified that the weights of the vials which Complainant measured were within Respondent's specifications. Complainant's duties as a fill operator included performing a fill check to insure that the proper amount of concentrate was being added to each vial. Reid Dep., p. 136. He was obligated to perform spot checks on at lest every 500th vial. Id. Finally, Reid was required to record the fill checks on the fill check tape which became part of the Device History Record ("DHR") . Reid Dep., p. 42; Murphy Dep., p.17.

The internal investigation of Abbott was organized to determine the source of the problem. It concluded that the overfill of most of vials in its Hepatitis C kits and inaccurate measurements written in the DHR lay at the hands of Mr. Reid. When Abbott weighed five boxes that contained 500 vials produced on Complainant's shift, every vial was above specification, a fact not denied by Complainant. Reid Dep., p. 153. Except for Mr. Murphy, the investigators assigned to discover the cause of the problem were not involved in the employment decision to discharge Complainant.

Unless Complainant can show some fact that the reason given for his discharge was mere pretext for discrimination based on his race, then there is no genuine issue of material fact, and Respondent's Motion will be granted. Mr. Reid himself admits that he has no reason to believe that his supervisor, Mr. Murphy, had any discriminatory motivation against him prior to September 4, 2002, the day he was interviewed as part of Respondent's investigation. Reid Dep. p. 75. Mr. Reid believed that no other person at Abbott discriminated against him other than Mr. Murphy. Id.

Complainant merely relies on two arguments to prove pretext: Box 29, the only box not attributed to Complainant with overfilled vials, was packed during the prior shift and that employee, Mr. Vasquez, was not discharged. No one else was disciplined for the adjustment of the fill volume levels without documenting it in the DHR.

Complainant may show pretext by demonstrating that "the punishment meted out to him was different than the punishment given to similarly situated individuals who are not in the Complainant's protected class." Bush, supra, 166. Loyola University of Chicago v. Illinois Human Rights Commission, 500 NE.2d 639, 149 Ill.App.3d 8 (1st Dist.1986).

The question is not whether the employer in this case made a "perfect decision," rather whether the decision was one based on race discrimination. Bush, supra, at 169. A business decision may be considered "legitimate" and "non-discriminatory" within the meaning of McDonnell Douglas, supra, "even though the decision is not the most equitable one which could

be made." *Phillips, et al and Walsh Construction Company of Illinois,* 41 Ill. HRC Rep. 207,216 (1988). The Complainant must present some evidence that the employer's explanation has been found to be "unworthy of credence." Id. The accuracy of the employer's decision is secondary as long as there is a good faith belief in it. Holmes v. Board of County Commissioners, Morgan County, 26 Ill. HRC Rep. 63 (1986).

After Abbott's investigation addressing the cause of the manufacturing problem, which included interviews with all concerned PEO's, Mr. Murphy then turned to the question of employee discipline. Although Complainant's responsibility was established by Abbott's investigation, there still remained the contents of box 29, and Vasquez's accountability. Because the vials in box 29 could have been packed from either shift of Reid or Vasquez, Mr. Murphy decided that there was not adequate evidence to link Vasquez with enough wrongdoing to discharge him from his employment. On the other hand, Reid had 5 defective boxes of vials attributed directly to him, and he also failed to accurately record the fill level of any vials produced during his shift. If Reid would have performed his required duties, he would have discovered the weights of his vials were outside the specifications. Reid and Vasquez were not similarly situated employees.

The investigation itself does not have to be "intensively investigated," as alleged by Complainant. See, discussion above. In any respect, as part of Respondent's examination into the manufacturing problem, Mr. Murphy meet with Reid, Vasquez and Crutchfield to interview them as to their respective employment duties and the issue of vials and recording. Reid Dep. p.39. Murphy Dep. p. 25 and 41.

Complainant focused on the adjustments that raised and lowered volume level and Mr. Vasquez's (third shift) and Mr. Crutchfield's (second shift) alleged failure to record it. If there was evidence that Vasquez or Crutchfield adjusted the fill volume level and failed to record their doing so, it would constitute misconduct. Murphy Dep., p. 167. However, Mr. Reid does not submit any evidence identifying any co-worker as being responsible for the changes in the fill

volume levels. Reid Dep., p.54. Neither Mr. Murphy nor the investigation has any evidence to point to any specific operator either, thus, the lack of discipline toward any employee, including Mr. Reid, concerning the issue of adjustments. Murphy Dep., pp. 165-166. Mr. Murphy's decision to discharge Complainant was based on a good faith investigation of his conduct. Complainant fails to present some factual basis that would create a triable issue on the question of whether Abbott's articulated reason for its decision to terminate Reid was a pretext for race discrimination.

RECOMMENDATION

Based upon the foregoing, there are no genuine issues of material fact and Respondent is entitled to a recommended order in its favor as a matter of law. Accordingly, it is recommended that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY:_____
WILLIAM J. BORAH
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: November 16, 2009